
(1976) 01 BOM CK 0024

Bombay High Court

Case No: None

Phulabai Sadhu Shinde

APPELLANT

Vs

The State of
Maharashtra

RESPONDENT

Date of Decision: Jan. 6, 1976

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 309

Citation: (1976) CriLJ 1519

Hon'ble Judges: Vaidya, J; Rege, J

Bench: Division Bench

Judgement

Vaidya, J.

The above appeal is filed through jail by Phulabai Sadhu Shinde, who was convicted by the Sessions Judge, Bhir, on October 24, 1975. in Sessions Case No. 88 of 1974, under Sections 309 and 302 of the Indian Penal Code, and sentenced to undergo simple imprisonment for 3 months for the offence u/s 309, and to imprisonment for life for the offence punishable u/s 302 subject to Section 428 of the New Criminal Procedure Code.

2. The prosecution case, briefly stated, was as under: Phulabai is the wife of the complainant, Sadhu Pandurang Shinde. They lived in village Renapur in Taluka Ambajogai, District Bhir. Sadhu had 3 sons, Babruwahan, Jalam and Pandurang from her. He had one more son, named Vithal, from her, who was aged 1 1/2 years. Phulabai had physical illness since about one year prior to the death of Vithal on August 2, 1974. In spite of medical treatment, the illness was persisting. Vithal was also suffering from rickets for about 2 months prior to his death.

3. At a distance of about 200 feet from the house of Sadhu, there is a well. On the night of August 1, 1974, the complainant was sleeping in one part of his house while the accused, Phulabai, was sleeping in the other part, near the door, with his children, Babruwahan, Pandurang and Vithal, Phulabai had chained the door, from her side, before she went to

sleep. Next morning i.e. the morning of August 2, 1974, after Sunrise, the complainant Sadhu found the door open. He also found that Phulabai and Vithal were missing. He saw some people collected near the well, saying that one woman had fallen into the well. The complainant also went to the well, Some people then took out Phulabai from the well along with the child. Phulabai was alive. Vithal was dead.

4. The complainant then went to the police station, at Renapur, on the same day. His statement was recorded by the Sub-Inspector Gosavi, who registered offences under Sections 302 and 309, I.P.C. against Phulabai, went to the well, and made inquest report and panchnama of the scene of offence. The child was sent to the dispensary at Renapur for post-mortem, while Phulabai was sent there for treatment.

5. After completing the investigation, a charge sheet was filed against her under Sections 302 and 309 of the Indian Penal Code, in the Court of the Judicial Magistrate, First Class, Ambajogai, alleging that the accused Phulabai was ailing for a long time and was fed up with her life and hence, out of frustration, she took a jump, along with the deceased infant Vithal, to end her life and the life of Vithal, because Vithal was also not keeping well. The learned Magistrate committed the accused to be tried before the Court of Session.

6. The learned Sessions Judge framed the charge under Sections 302 and 309. Phulabai pleaded not guilty to the charge. She denied that she jumped in the well carrying the child with her, but contended that she was ill, there was something wrong with her brain, and she was behaving like a person of unsound mind. She was not on senses; and she was not in a position to know the consequences.

7. In other words, her defence was, u/s 84 of the Indian Penal Code, which runs as follows:

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

8. The prosecution relied on the evidence of Sadhu, panch and the police witnesses. There was no eye-witness to the actual incident. The learned Judge concluded from this evidence as follows in paragraph 11 of his judgment:

This is all the evidence led by the prosecution. Here is no dispute that the accused Phulabai was keeping unwell since about one year prior to the death of Vithal and there was no improvement in her condition in spite of the treatment given to her. It is also not in dispute that Vithal was suffering since about a couple of months prior to his death. The accused has contended that she did not know what had happened because she was of unsound mind and she also denied that she was found in the well on the date in question while her son Vithal was found dead. Sadhu P.W. 1 is the husband of the accused, while Anurath P.W. 3 is her nephew. The evidence on record shows that the relations between Sadhu and the accused were good. I thus see no reason to disbelieve the evidence of

Sadhu and Anurath which clearly goes to show that in the morning of 2nd August 1974 the accused Phulabai was found inside the well and her child Vithal was tied to her stomach by means of Sari and he was found dead when Anurath and others went inside the well.

9. From these facts, the learned Judge inferred as a matter of inference from circumstantial evidence that the accused must be held guilty for the offences under Sections 302 and 309; and Section 84 of the Indian Penal Code did not apply to this case, as she had not discharged the burden on her of proving that she was at the time of the commission of the offence by reason of unsoundness of mind, incapable of knowing the nature of the act, or that she was doing what was either wrong or contrary to law.

10. It is difficult to appreciate these conclusions of the learned Judge, when there was no evidence at all to prove the offences under Sections 302 and 309 of the Indian Penal Code. Section 309 runs as follows:

Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both.

The prosecution has no doubt, established circumstances which may lead one to infer that the accused may have attempted to commit suicide as her illness had become chronic and incurable and her son was also suffering from rickets and she was fed up with life; but it was necessary for the prosecution to establish further, that she did a particular act towards the commission of the offence to prove the alleged attempt to commit suicide as required by Section 309.

11. The prosecution relied, in this connection, only on the circumstance that the body of Phulabai was found along with the dead body of Vithal next morning. It is difficult to hold that the only inference which could be drawn by mere discovery on the next morning was necessarily that the accused herself knowingly and intentionally jumped into the well to commit suicide.

12. Although the burden of proof of the defence u/s 84 is on the accused that burden is not as heavy on the accused as on the prosecution. Mr. Bhonsale, the learned Public Prosecutor appearing for the State submitted referring to the panchnama of the scene of offence and other circumstances that as there was a wall around the well, there could not be an accidental fall. Mr. Bhonsale is right in his submission, but that does not mean that the possibility of the accused doing something by reason of unsoundness of mind, in a state where she was incapable of knowing what she was doing at night was not possible. It cannot be totally ruled out, and therefore, the benefit of doubt ought to have been given to her.

13. Similarly the conviction u/s 302 is also based on the same circumstances of the discovery of the dead body of Vithal on the next morning. That again is not the only

inference which may be drawn in the facts and circumstances. As long as there is a possibility of the accused being of unsound mind at the time when she fell into the well, there is also possibility of the accused falling into the well, with the child, in that state of mind. The benefit of doubt must be given to the accused even in respect of the offence u/s 302 similarly for the same reason.

14. The learned Judge appears to have taken the view that because she took the child along with her when she jumped into the well, the possibility of her mind being unsound, must be excluded. Mr. Bhonsale submitted that in the absence of the medical evidence to show the nature of the unsoundness of mind, it was difficult to hold that the accused was so unsound in mind as to take even her child and jump into the well. It has been repeatedly laid down by courts with regard to circumstantial evidence, that the court should avoid the tendency of imagination playing tricks with circumstances after the mind comes to the conclusion that the person is morally guilty.

15. In the present case as stated above, we have no evidence as to how exactly the accused and Vithal fell into the well, From the mere fact that they were discovered next morning, it may be possible to hold that she attempted to commit suicide by jumping along with her child, but it is also possible that she was in such unsound state of mind that she did not know what she was doing when she jumped into the well along with her child. In the absence of any evidence clearly indicating as to exactly how they fell into the well, it would be wrong to play on the imagination and hold the accused guilty and exclude the operation of Section 84 of the Indian Penal Code. The absence of medical evidence does not justify exclusion of common sense. The learned Judge erred in not giving the benefit of Section 84 or at least the benefit of doubt to the accused in this case.

16. As on reading the judgment and the appeal memo sent through jail and hearing Mr. G. K. Oak appointed for the accused, we felt that the accused was entitled to acquittal without any further delay, we requested the Public Prosecutor to peruse the record and make his submission. Accordingly, Mr. Bhonsale promptly went through the record, and made all submissions which he possibly could in support of the judgment. Thus we are able to acquit the accused immediately.

17. In the result, the conviction and sentence passed by the learned Sessions Judge on October 24, 1975 against Phulabai are set aside and the accused is ordered to be released forthwith and set at liberty. The appeal is allowed.